

KEMP BROTHERS  
CONSTRUCTION, INC.

CONTRACT NO. V101DC187

**VABCA-7204**

VA MEDICAL CENTER  
LONG BEACH, CALIFORNIA

*Steve Rosenfield*, Vice President, Kemp Brothers Construction, Inc.,  
Santa Fe Springs, California, for the Appellant.

*Charlma J. Quarles, Esq.*, Deputy Assistant General Counsel; and *Phillipa L. Anderson, Esq.*, Assistant General Counsel, Washington, D.C., for the  
Department of Veterans Affairs.

### **ORDER OF DISMISSAL**

1. On July 23, 2004, the Board docketed the appeal of Kemp Brothers Construction, Inc., on behalf of Commerce Systems, a subcontractor for Kemp Brothers Construction, Inc., as VABCA-7204.
2. In a letter dated June 28, 2004, Kemp Brothers Construction, Inc., stated that "Commerce Systems is appealing the Contracting Officer's decision...in the amount of \$57,850.00." Kemp Brothers further stated that "Kemp Brothers Construction does not support Commerce Systems' claim in this matter." In Commerce Systems letter dated May 14, 2004 to Kemp Brothers Construction, they cite 41 U.S.C. § 606 which states "...the contractor may appeal such decision to any agency board of contract appeals, as provided in section 607 of this title."

3. Section 601 of 41 U.S.C, defines a contractor as “a party to a Government contract other than the Government.” Commerce Systems, as a subcontractor of Kemp Brothers Construction, Inc., is not in privity of contract with the United States and, thus, has no right of appeal under the Contract Disputes Act.

*Erickson Air Crane Co. v. U.S.* 731 F.2d 810 (Fed. Cir. 1984); FAR 44.203(b)(3).

4. However, Kemp Brothers may appeal to this Board under the Contract Disputes Act on behalf of its subcontractor in what is termed a “sponsored appeal.” Since it has been represented that Kemp Brothers does not support Commerce Systems appeal, it appears that this Board has no jurisdiction over the appeal of Commerce Brothers in VABCA-7204. *W.G. Yates and Sons Construction Co. Inc. v. Caldera*, 192 F.3d 987 (Fed Cir. 1999).

5. In July 23, 2004, NOTICE OF DOCKETING AND ORDER TO SHOW CAUSE, the Board directed Appellant to Show Cause why this appeal should not be dismissed for lack of jurisdiction. To date the Board has not received a response.

6. Accordingly, the appeal of Kemp Brothers Construction, Inc., VABCA-7204, is hereby dismissed for lack of jurisdiction pursuant to Board Rule 5.

**IT IS SO ORDERED**

DATE: **August 26, 2004**

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GARY J. KRUMP  
Chief Administrative Judge